

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:98-CR-16-1-BO
No. 5:14-CV-351-BO

JUSTIN HAWKINS,)
Petitioner,)
v.)
UNITED STATES OF AMERICA,)
Respondent.)

ORDER


This matter is before the Court on petitioner's motion for reconsideration [DE 122] and motion for appointment of counsel [DE 123]. Petitioner asks the Court to reconsider its order dismissing petitioner's second motion pursuant to 28 U.S.C. § 2255 as second or successive. 28 U.S.C. § 2255(h). In his motion, petitioner states that the Court improperly construed his motion as one pursuant to § 2255, when it should properly be construed as one pursuant to § 2255(f)(3).

Petitioner has presented the Court with no basis upon which it might reconsider its prior ruling. *See Bogart v. Chappell*, 396 F.3d 548, 555 (4th Cir. 2005) (three circumstances that justify altering or amending a judgment: (1) to incorporate an intervening change in the law, (2) to incorporate new evidence which was unavailable when the court made its decision, and (3) to rectify a clear legal error or prevent manifest injustice.). Petitioner's prior § 2255 motion was dismissed on the merits, causing any subsequent motions to be considered second or successive. *See In re Williams*, 444 F.3d 233, 235 (4th Cir. 2006). Petitioner's motion to reconsider is therefore DENIED.

Petitioner has noticed an appeal of this Court's final order dismissing his § 2255 motion as second or successive. [DE 124]. Petitioner has also moved for appointment of counsel. [DE 123]. As it is not clear from petitioner's filing, insofar as petitioner requests the appointment of

counsel in this Court, such request is DENIED. Insofar as petitioner seeks appointment of counsel to assist with his case before the court of appeals, that matter is properly before the court of appeals for consideration.

SO ORDERED, this 28 day of January, 2015.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE